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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,962	02/02/2004	Darin G. Schaeffer	10703/042	9118

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BRINKS HOFER GILSON & LIONE  
ONE INDIANA SQUARE, SUITE 1600  
INDIANAPOLIS, IN 46204

EXAMINER

ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/769,962

**Applicant(s)**

SCHAEFFER ET AL.

**Examiner**

Shumaya B. Ali

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-21, 30 and 31 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 22-29 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> .                  |

***Response to Arguments***

Applicant's arguments with respect to claims 1-9,22-28,30,31 have been considered but are moot in view of the new ground(s) of rejection.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. **Claims 5 and 29** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claims 5 and 29, structures respectively claimed "receptacle" and "cap" in claims 5 and 29 are considered vague. Applicant is requested to identify what is constitutes a "receptacle" and "cap" as claimed.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:  
  
A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 1,2,8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Fauza US Patent 6,612,305 B2**

As to claim 1, Fauza discloses a tracheotomy tube (see fig.2 reference object 2) comprising: a hollow tubular body (fig.2, 2) having a proximal end portion (proximal end is away from the body/toward flange 3), a distal end portion (opposite end of the proximal) and a curved portion intermediate said proximal and distal end portions (fig.2 depicts a curved portion between the distal and proximal end of the tube); and a flange (fig.2 reference object 3) situated at said proximal end portion, said flange being capable of radial extension from said tube (“the possibility to move this flange 3 is helpful, given the absolute anchorability of the tube, col.4 lines 9-10), and being manipulatable to selectively prevent said radial extension (Fauza’s flange allows anchorability of the tube at a given position, therefore the flange is capable of allowing and preventing radial extension, flange means connected to the proximal end portion of the tube, suitable for securing the distal end portion of the tube within the tracheal lumen, wherein the flange means provides an anchoring point external the patient's throat, see claim 1).

2. As to claim 2, Fauza discloses the tracheotomy tube of claim 1, wherein said flange is selectively attachable (“ A movable flange (3) allows for extra fixation of the device around a patient’s neck”, see abstract, see also col.4 lines 9-10) to said proximal end portion to provide

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said radial extension and detachable (**Fauza's flange allows anchorability of the tube at a given position, therefore the flange is capable of allowing and preventing radial extension**) from said proximal end portion when said radial extension is to be prevented.

3. **As to claim 8, Fauza discloses** the tracheotomy tube of claim 1, further comprising a removable inner cannula (**fig.2, 5**) insertable in said hollow tubular body.

4. **As to claim 9, Fauza discloses** the tracheotomy tube of claim 1, wherein said hollow tubular body includes an inflatable cuff (**fig.2, 1**) surrounding a part of said distal end portion, said tracheotomy tube further comprising an inflation line (**see attached fig.2**) connecting said cuff to a source (**air, fig.2, 4**) of an inflation fluid.

**Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Hazard US Patent 5,058,580**

5. **As to claim 22, Hazard discloses** a device for percutaneous insertion into the trachea of a patient, comprising: a tracheotomy tube (**see fig.1 reference object 10**) having a longitudinal passageway (**col.3 lines 2-4**) there through, said tracheotomy tube having a distal end (**fig.1 reference object 14**) portion percutaneously insertable into said trachea and a proximal end (**fig.1 reference object 16**) portion exterior to the trachea when said distal end portion is inserted; said tracheotomy tube further having a radially extending flange (**fig.1 reference object 26**) attachable to said proximal end portion of the tracheotomy tube after said distal end portion has been inserted into the trachea (**see fig.6**); a dilator (**fig.4 reference object 34**) positionable within said longitudinal passageway of said tracheotomy tube (**col.3 lines 5-18**) for dilating an opening in said trachea for insertion of said tracheotomy tube; and a locking assembly (**fig.1**

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**reference object 37, col.5 lines 20-25)** for locking the tracheotomy tube to the dilator during insertion of said tracheotomy tube into the trachea.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fauza US Patent 6,612,305 B2**

7. **As to claim 3, Fauza does not disclose** the tracheotomy tube of claim 2, wherein said flange is attachable to said tube by a snap-fit. **However, applicant has not established criticalities regarding the type of fit used in the invention. Therefore, Fauza's disclosure of a flange with a strap attachment is considered an equivalent structure capable of securing the flange to the tube (col.4 lines 5-10).**

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**Claims 4,6,7,23-28, and are rejected under 35 U.S.C. 103(a) as being unpatentable over Fauza US Patent 5,058,580 in view of Roy US Patent 6,135,110**

8. **As to claim 4, Fauza discloses the tracheotomy tube of claim 3, and wherein said flange includes a cut-away portion (see labeled fig.2, attachment below), collar (see labeled fig.2), however does not disclose wherein said collar having a groove, and said groove being cooperatively sized and shaped to mate when said flange is attached to said tube. As to claim 4, Roy teaches a tracheotomy tube with a snap ring that is rotably mounted about a proximal end of the tube (col.2 lines 20-21) that are meant to mate with tabs for guiding the movement of tabs (col.4 lines 38-39). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the tube of Fauza in view of Roy in order to provide a collar at the proximal end of the tube which will be capable of guiding and preventing movements inside the tube.**

9. **As to claim 6, Fauza discloses the tracheotomy tube of claim 4, wherein said collar is integral with the hollow tubular body (see fig.2)**

10. **As to claim 7, Fauza does not disclose the tracheotomy tube of claim 4, wherein said collar includes one or more barbs for attaching the collar to said hollow tubular body. However, applicant has not established criticalities regarding the attachment means including one or more barbs to be used in the invention. Therefore, Fauza's integral collar is considered to have some equivalent form of attachment means that is capable of securing collar to said hollow tubular body.**

**Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hazard US Patent 5,058,580 in view of Roy US Patent 6,135,110**

11. As to claim 23, Hazard discloses the device of claim 22, wherein said locking assembly comprises a securement member (**fig.1 reference object 37**) associated with the dilator, **however does not disclose** said securement member engageable with a complementary member on said tracheotomy tube. As to claim 23, Roy teaches a tracheotomy tube with a collar contacting tab members for guiding the movement of the tabs relative to the collar, and the collar has two stops to prevent any further movement of a tab. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the tube assembly of Hazard in view of Roy in order to provide the assembly with a collar for the purposes of preventing or guiding movement of the tube.

12. As to claim 24, Hazard does not disclose the device of claim 23, wherein said locking assembly further comprises a stop member disposed on an outer surface of said dilator, said stop member engaged with said dilator such that substantial axial movement of said stop member along said dilator is prevented when an axial force is applied to said stop member, said stop member positioned on said outer surface and engageable with said securement member and said complementary member for preventing excess penetration of the tracheotomy tube into the trachea. As to claim 24, Roy teaches a tracheotomy tube with a collar contacting tab members for guiding the movement of the tabs relative to the collar, and the collar has two stops to prevent any further movement of a tab. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the tube assembly of Hazard in view of Roy in order to provide the assembly with a collar associated



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**with the securement member for the purposes of preventing or guiding movement of the tube.**

13. **As to claim 25, Hazard discloses the device of claim 24, wherein said stop member comprises an annular ring (fig.5 seems to depict reference object 37 as a ring like structure) integral with said dilator.**

14. **As to claim 26, Hazard discloses the device of claim 24; wherein said stop member comprises an annular ring fitted on the outer surface (the ring is on the proximal portion of the dilator, col.5 lines 19-20) of said dilator.**

15. **As to claim 27, Hazard does not disclose the device of claim 24, wherein said complementary member comprises a collar integral with said tracheotomy tube. As to claim 27, Roy teaches a tracheotomy tube with a collar rotatably mounted (“integral”) about an end of the tube (see col.4 lines 3-5) contacting tab members for guiding the movement of the tabs relative to the collar, and the collar has two stops to prevent any further movement of a tab. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the tube assembly of Hazard in view of Roy in order to provide the assembly with a collar associated with the securement member for the purposes of preventing or guiding movement of the tube.**

16. **As to claim 28, Hazard discloses he device of claim 24, wherein said complementary member comprises a collar fitted on an exterior surface of said tracheotomy tube. As to claim 28, Roy teaches a tracheotomy tube with a collar rotatably mounted (“integral”) about an end of the tube (fig.1a depicts a collar mounted on a tube, see col.4 lines 3-5) contacting tab members for guiding the movement of the tabs relative to the collar, and the collar has two**

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**stops to prevent any further movement of a tab. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the tube assembly of Hazard in view of Roy in order to provide the assembly with a collar associated with the securement member for the purposes of preventing or guiding movement of the tube.**

### *Drawings*

17. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **in the claim 5, “receptacle” and 29, “a cap”** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

18. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

19. Claims 5 and 29 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims recite limitation “receptacle” and “a cap” which is not distinctly pointed out in the drawings. It is unclear what the applicant disclosed to be “receptacle” and “a cap”. Therefore, claims 5 and 29 are not considered for the examination purposes.

### ***Allowable Subject Matter***

20. **Claims 12-21,30-31 are allowed.** As to claim 12, the prior art of record does not teach nor render obvious the overall claimed combination of a dilator used with a tracheotomy tube where the proximal end of the dilator has a larger-diameter stepped portion to limit axial movement of the dilator through the tube. Therefore, the invention defined in claim 12 is novel.

21. **Claims 10, and 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


### ***Conclusion***

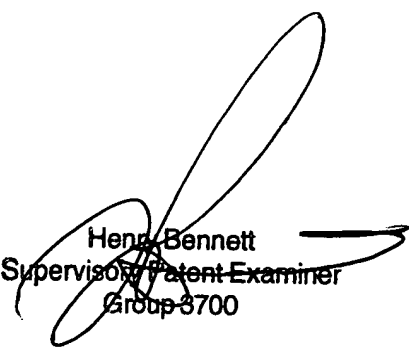
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25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Shumaya B. Ali** whose telephone number is **571-272-6088**. The examiner can normally be reached on M-F 8:30 am-4: 30 pm.

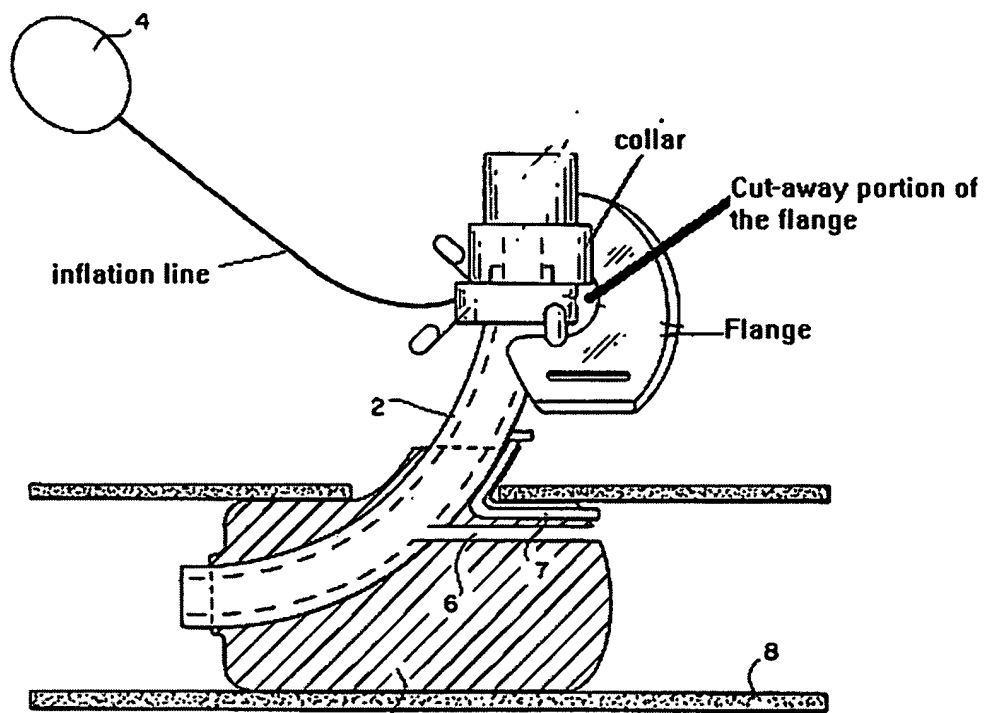
26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Henry Bennett** can be reached on **571-272-4791**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaya B. Ali  
Examiner  
Art Unit 3743

  
Henry Bennett  
Supervisor Patent Examiner  
Group 3700

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PRIOR ART  
U.S. Patent  
US 6,612,305 B2